

Office of Chief Counsel
Internal Revenue Service

memorandum

CC: [REDACTED]
[REDACTED]

date: September 13, 1999

to: District Director, [REDACTED]
Attention: [REDACTED]
[REDACTED]

from: District Counsel, [REDACTED]

subject: Validity of Claim under I.R.C. §6427(1) on Quarterly Federal
Excise Tax Return for the Quarter Ended [REDACTED]

Taxpayer: [REDACTED]

E.I.N.: [REDACTED]

Address: [REDACTED]

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This is in response to the request received by this office on May 14, 1999 from the Internal Revenue Service's Examination

Division for assistance in determining the validity of the claim under I.R.C. §6427(1) of [REDACTED] on [REDACTED]'s Quarterly Federal Excise Tax Return (Form 720) for the quarter ended [REDACTED], the remedy of the Internal Revenue Service (Service) for the recovery of the amount of any improperly allowed portion of the claim, and [REDACTED]'s options for recouping any disallowed portion of such claim.

Based on the following discussion, we have concluded the following:

- a. That only \$[REDACTED] of [REDACTED]'s claim totaling \$[REDACTED] related to aviation fuel on [REDACTED]'s Form 720 for the quarter ended [REDACTED] was properly allowed under I.R.C. §6427(i) and §6427(1).
- b. That \$[REDACTED] of such claim was not properly allowed under I.R.C. §6427(i).
- c. That the Service can recover the improperly allowed portion of the claim through either assessment and collection under I.R.C. §6201, assessment and collection under I.R.C. §6206, or an erroneous refund suit under I.R.C. §7405. However, the preferred method of recovery is assessment and collection under I.R.C. §6201.
- d. That [REDACTED] may not amend any Forms 720 to claim any amounts improperly claimed under I.R.C. §6427(i) and §6427(1) on [REDACTED]'s Form 720 for the quarter ended September 30, [REDACTED].
- e. That [REDACTED] may amend its income tax returns for the years ended [REDACTED], [REDACTED], and [REDACTED] to claim the improperly allowed portion of the claim on its Form 720 for the quarter ended [REDACTED] only if [REDACTED]'s filed income tax returns do not already include claims under I.R.C. §6427(1).

In addition, although the Examination Division did not raise any issue concerning claims on Forms 720 filed for quarters other than the quarter ended [REDACTED], our review of transcripts of account and some of [REDACTED]'s Forms 720 for quarters before the quarter ended [REDACTED] reflects potential improper claims on Forms 720 for prior quarters.

Consequently, as discussed below, we recommend that the Service take the following actions:

(b)(5)(AC), (b)(7)a
[REDACTED]

(b)(5)(AC), (b)(7)a
[REDACTED]

(b)(5)(AC), (b)(7)a
[REDACTED]

(b)(5)(AC), (b)(7)a
[REDACTED]

(b)(5)(AC), (b)(7)a
[REDACTED]

This memorandum does not address any defects with respect to \$ [REDACTED] of the claims filed on [REDACTED]'s Form 720 for the quarter ended [REDACTED] for claims related to [REDACTED]'s nontaxable use of gasoline during the quarter ended [REDACTED]

[REDACTED] (\$ [REDACTED]) and refunds of air transportation taxes paid (\$ [REDACTED]) to [REDACTED]'s customers. However, in discussions about [REDACTED]'s claims filed on [REDACTED]'s Form 720 for the quarter ended [REDACTED], our National Office expressed concerns that such portion of the claim also is defective. For example, the claim related to nontaxable use of gasoline for the quarter ended [REDACTED], which is outside the taxable year ended [REDACTED], must be filed on a Form 4136 for the year ended [REDACTED] under a rule similar to I.R.C. §6427(i)(4)(A). Because our National Office believes that all defects in the claim on [REDACTED]'s Form 720 for the quarter ended [REDACTED] should be addressed, it requests that you contact its representatives directly concerning the defects not addressed in this memorandum. Such representatives are Mr. Frank Boland and Ms. Ruth Hoffman, who both may be reached at 202/622-3130.

Issues

1. Whether [REDACTED]'s claim under I.R.C. §6427(l) for payment on [REDACTED]'s Form 720 for the quarter ended [REDACTED] related to aviation fuel used during the quarters from the quarter ended [REDACTED] through the quarter ended [REDACTED], inclusive, was properly allowed. U.I.L.: 6427.11-00

2. If any portion of [REDACTED]'s claim for payment on its Form 720 for the quarter ended [REDACTED] should not have been allowed, can the Service now take the following actions:

A. Assessment and collection under I.R.C. §6201. U.I.L.: 6201.07-02

B. Assessment and collection under I.R.C. §6206. U.I.L.: 6206.00-00

C. Suit for erroneous refund under I.R.C. §7405. U.I.L.: 7405.00-00

3. If the Service can recover the improperly allowed portion of the claim on [REDACTED]'s Form 720 for the quarter ended [REDACTED], which is the preferred method of recovery.

4. If the Service recovers any portion of the amounts improperly allowed on [REDACTED]'s Form 720 for the quarter ended [REDACTED], what is the proper period during which interest accrues on such amounts.

5. If the Service takes action to recover the improperly allowed portion of [REDACTED]'s claim on its Form 720 for the quarter ended [REDACTED], whether [REDACTED] can take the following actions:

A. Amend Forms 720 for quarters before the quarter ended [REDACTED] to file claims under I.R.C. §6427(1).

B. Amend its income tax returns for the years ended [REDACTED], [REDACTED], and [REDACTED] to file claims for credits under I.R.C. §34 and §6427(1).

C. If [REDACTED] has previously claimed credits under I.R.C. §34 and §6427(1) on its income tax returns for the taxable years ended [REDACTED], [REDACTED], and [REDACTED], amend its income tax returns for such taxable years to include increased claims for credits related to aviation fuel used during the taxable year related to each return. U.I.L.: 6511.01-03; 6511.05-00; 6511.09-00

6. Whether the Service improperly allowed claims for payment on or related to [REDACTED]'s Forms 720 for quarters before the quarter ended [REDACTED].

7. If the Service improperly allowed claims for payment on or related to [REDACTED]'s Forms 720 for quarters before the quarter ended [REDACTED], whether the Service may recover any payments of claims improperly allowed.

Facts

[REDACTED] is a domestic corporation that is headquartered in [REDACTED]. From at least [REDACTED] through [REDACTED], inclusive, [REDACTED] has been engaged in the business of commercial air transportation of persons and property on domestic and international flights.

As the result of such business, [REDACTED] purchased aviation fuel other than gasoline (Jet A fuel) primarily for use in its aircraft that was subject to the tax under I.R.C. §4091. [REDACTED] also used a relatively small portion of the Jet A fuel in vehicles in an "off-highway business use" as defined by I.R.C. §4041(b)(1) and §6421(e)(2). Such "off-highway business use" included the transportation of luggage in tugs between aircraft and terminals at various airports.

The cost of aviation fuel purchased by [REDACTED] included the excise tax under I.R.C. §4091.

[REDACTED]'s Forms 720

[REDACTED] filed Forms 720 for the following quarters on the following dates:

Quarter EndedDate Filed

[REDACTED]

[REDACTED]

In an effort to recoup excise tax included in the purchase price of Jet A fuel used for nontaxable purposes, [REDACTED] claimed entitlement to payments under I.R.C. §6427(l) on its Forms 720:

Quarter EndedAmount

[REDACTED]

\$

[REDACTED]

*

*

*

*/**

*

*

*

* The file does not indicate the specific quarter during which the Jet A fuel was used by [REDACTED].

** Although we do not yet have access to the related Form 720, the claim under I.R.C. §6427(l) was determined from a transcript of account.

[REDACTED] classified the claimed refunds for the following

quarters as related to use of Jet A fuel during the following periods:

Quarter for
Which ClaimedPeriod During
Which Fuel Used

Ended	
Ended	

Quarter Ended [REDACTED]
Months of [REDACTED] [REDACTED]
[REDACTED] [REDACTED]
[REDACTED] & [REDACTED]
Period "[REDACTED] - [REDACTED]" .

Ended	
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██████████ classified the claimed refunds for the following quarters as related to Jet A fuel related to the following periods without indicating whether the period was the period of purchase or use:

Quarter for
Which ClaimedRelated Period

Ended	
Ended	
Ended	

Quarters Ended [REDACTED]
Quarter Ended [REDACTED]
Months of [REDACTED] [REDACTED] [REDACTED]
[REDACTED] [REDACTED] [REDACTED] [REDACTED]
[REDACTED] [REDACTED] [REDACTED] [REDACTED]
[REDACTED] [REDACTED] [REDACTED] [REDACTED]
[REDACTED] [REDACTED] [REDACTED] [REDACTED]
[REDACTED] [REDACTED] [REDACTED] [REDACTED]

* [REDACTED] did not identify a specific period for [REDACTED] of the claim

██████████'s Forms 720 for the quarters ended ██████████ ██████████, and ██████████ reflected that the claimed credits were attributable to fuel actually used internationally during the reported quarters.

Although [REDACTED]'s Form 720 for the quarter ended [REDACTED] [REDACTED] did not clearly reflect the specific quarter during which fuel was used, such Form 720 reflected that the amounts attributable to [REDACTED]'s nontaxable use of [REDACTED] gallons of Jet A fuel was attributable to the following periods:

<u>Period</u>	<u>Amount</u>
[REDACTED]	\$ [REDACTED]
Total	\$ [REDACTED]

Because many of the above amounts on [REDACTED]'s Forms 720 for the quarter ended [REDACTED] are the same for multiple quarters within the same or multiple taxable years, such amounts may not represent [REDACTED]'s actual use of fuel during a quarter, but merely [REDACTED]'s average use of fuel.

Under the prohibition for filing quarterly claims for the fourth quarter of a taxable year discussed below, the Service did not allow the credit of \$ [REDACTED] claimed under I.R.C. §6427 on [REDACTED]'s Form 720 for the quarter ended [REDACTED].

However, the Service allowed the following credits claimed under I.R.C. §6427(1) on [REDACTED]'s Forms 720 for the following quarters as credits against payment of the liability reported on such Forms 720:

<u>Effective Date of Credit</u>	<u>Quarter for Which Allowed</u>	<u>Amount Allowed</u>
[REDACTED]	Ended [REDACTED]	\$ [REDACTED]
[REDACTED]	Ended [REDACTED]	[REDACTED]
[REDACTED]	Ended [REDACTED]	[REDACTED]
[REDACTED]	Ended [REDACTED]	[REDACTED]

Because the Service failed to allow the credit of \$ [REDACTED] claimed under I.R.C. §6427(1) on [REDACTED]'s Form 720 for the quarter ended [REDACTED] when [REDACTED] filed the return, the Service allowed such credit as an abatement to assessed tax related to such Form 720 by [REDACTED].

In addition, effective [REDACTED], the Service transferred an overpayment credit that reflected the allowance of the claim under I.R.C. §6427(1) related to Jet A fuel of \$ [REDACTED] on [REDACTED]'s Form 720 for the quarter ended [REDACTED] to [REDACTED]'s Form 720 liability for the quarter ended [REDACTED].

Furthermore, effective [REDACTED], the Service transferred an overpayment credit that reflected the allowance of the claim under I.R.C. §6427(1) related to Jet A fuel of \$ [REDACTED] on [REDACTED]'s Form 720 liability for the quarter ended [REDACTED] to [REDACTED]'s Form 720 liability for the quarter ended [REDACTED].

There are no pending examinations of claims under I.R.C. §6427 on [REDACTED]'s Forms 720 for the quarters ended [REDACTED] through [REDACTED], inclusive. However, by [REDACTED], the Examination Division commenced an examination of [REDACTED]'s Form 720 for the quarter ended [REDACTED]. Such examination will specifically cover the credit under I.R.C. §6427(1) claimed on such Form 720. (b)(5)(AC), (b)(7)a

[REDACTED]

[REDACTED]'s Forms 1120

At all relevant times, [REDACTED] filed its consolidated U.S. Corporation Income Tax Returns (Forms 1120) on the basis of a [REDACTED]. Consequently, [REDACTED]'s relevant Forms 1120 cover the following quarters involved in [REDACTED]'s claim on its Form 720 for the quarter ended [REDACTED]:

Taxable Period of Form 1120

[REDACTED]

Quarters of Forms 720

[REDACTED]

[REDACTED] filed its Forms 1120 as follows:

<u>Taxable Year of Form 1120</u>	<u>Date Filed</u>
Ended [REDACTED]	[REDACTED]
Ended [REDACTED]	[REDACTED]
Ended [REDACTED]	[REDACTED]

On line 32(g) of [REDACTED]'s Forms 1120 and Forms 4136 for the years ended [REDACTED], [REDACTED], and [REDACTED], [REDACTED] reported credits for the nontaxable use of special motor fuels as follows:

<u>Taxable Year Ended</u>	<u>Amount of Credit</u>	<u>Number of Gallons</u>	<u>Rate</u>	<u>Line on Form 4136 on Which Reported</u>
[REDACTED]	\$ [REDACTED]	[REDACTED]	\$ [REDACTED]	7.a. 7.a. 4.a.

Form 4136 also provides separate lines for [REDACTED] to include a credit for its nontaxable use of Jet A fuel. Such lines were 9.a. and 9.b. for the years ended [REDACTED] and [REDACTED] and lines 6.a. and 6.b. for the year ended [REDACTED]. However, [REDACTED] did not insert any information on such lines for the taxable years ended [REDACTED], [REDACTED], and [REDACTED]. Our National Office expressed concern that [REDACTED] would not have had taxed special motor fuels because tax generally is imposed on that fuel only if it is delivered into the fuel supply tank of a registered highway vehicle. Consequently, unless [REDACTED] inserted information on the incorrect line of its Forms 4136, [REDACTED] appears not to have claimed any credits under I.R.C. §6427(l) on its Forms 1120 for the years ended [REDACTED], [REDACTED], and [REDACTED].

To ensure that [REDACTED] did not already claim a credit under I.R.C. §6427(l) and that the special motor fuels is not Jet A fuel, we understand that the Service must review of [REDACTED]'s related invoices and other records for purchase and use of fuels and related excise taxes.

Based on the credits claimed on Forms 4136 for the years ended [REDACTED], [REDACTED], and [REDACTED], [REDACTED] made timely income tax payments and deposits equal to the amount of tax due reduced by the amount of claimed credits.

In addition, effective [REDACTED], the Service transferred an overpayment credit of \$ [REDACTED] from [REDACTED]'s Form 1120 liability for the year ended [REDACTED] to [REDACTED]'s

Form 1120 liability for the year ended [REDACTED]. Furthermore, effective [REDACTED], the Service transferred an overpayment credit of \$ [REDACTED] from [REDACTED]'s Form 1120 liability for the year ended [REDACTED] to [REDACTED]'s Form 1120 liability for the year ended [REDACTED]. The overpayment credits for the years ended [REDACTED] and [REDACTED] reflected the allowance of credits claimed under I.R.C. §34 and §6427(1) on [REDACTED]'s Forms 1120 for such years.

Effective [REDACTED], the Service allowed the credit of \$ [REDACTED] claimed on [REDACTED]'s Form 1120 for the year ended [REDACTED] as a credit against payment of the tax reported on such Form 1120.

Although the Service has not yet disallowed the credits claimed on [REDACTED]'s Forms 1120 for the years ended [REDACTED], [REDACTED], and [REDACTED], (b)(7)a [REDACTED]

Applicable Limitation Period For Assessment of Increases in Tax

With the exception of the Examination Division's attempts to secure an extended limitation period for assessment with respect to [REDACTED]'s Form 1120 for the year ended [REDACTED], the file does not reflect any facts that would extend the general three-year limitation periods under I.R.C. §6501 applicable to assessment of federal taxes under I.R.C. §6201 and the filing of related refund claims under I.R.C. §6511.

The general three-year period for assessment under I.R.C. §6501 of any deficiencies in income tax for [REDACTED]'s Forms 1120 for the taxable years ended [REDACTED], [REDACTED], and [REDACTED] will expire on the respective dates of [REDACTED], [REDACTED], and [REDACTED]. However, the Examination Division has requested that [REDACTED] execute an agreement extending such assessment and refund limitation periods for [REDACTED]'s Form 1120 for the taxable year ended [REDACTED] under I.R.C. §6501(c)(4) until [REDACTED].

Previous Examinations of [REDACTED]'s Forms 720 and 1120

In examinations of [REDACTED]'s Forms 720 for quarters before the [REDACTED] and Forms 1120 for years before the year ended [REDACTED], the Service focused its examinations on whether fuel was used by [REDACTED] for a nontaxable purpose. Such previous examinations did not focus on whether [REDACTED] filed timely claims under I.R.C. §6427(1) or whether a claim on a Form

720 for a permissible quarter within a taxable year contained claims for quarters outside the taxable year or claims for the fourth calendar quarter of a taxable year. Consequently, the

(b)(7)a [REDACTED]

In at least one previous examination, Revenue Agent [REDACTED] discovered that [REDACTED] claimed credits for excise tax attributable to Jet A fuel when [REDACTED] actually used a portion of the Jet A fuel for a nonexempt use. Specifically, a portion of the amount that was claimed to be payable under I.R.C. §6427(1) or to comprise an income tax credit under I.R.C. §34 was actually attributable to taxable "on-road" vehicle use and not to exempt "off-highway business use". (b)(7)a [REDACTED]

Miscellaneous Facts and Assumptions

Because [REDACTED]'s principal executive office is in [REDACTED] [REDACTED] is subject to precedent binding on taxpayers in the [REDACTED].

[REDACTED] has not filed any Claims for Refund of Excise Taxes (Forms 8849) for fuels used in nontaxable uses.

The discussion in this memorandum makes the following assumptions:

- a. [REDACTED] does not possess an "H" registration.
- b. [REDACTED] is the ultimate purchaser of the fuel in question.
- c. The claimed credit on [REDACTED]'s Form 720 for the quarter ended [REDACTED] relates to fuel used in nontaxable uses.
- d. Except for the amount of Jet A fuel related to the period from [REDACTED] through [REDACTED], inclusive, on [REDACTED]'s Form 720 for the quarter ended [REDACTED], the amounts of Jet A fuel on such Form 720 relate to the quarter of actual use.
- e. [REDACTED] is not claiming the credit based on fuel sold in a nontaxable transaction or that another person is entitled to payment, credit, or refund with respect to any fuel and the credit is not subject to reduction under Treasury Regulation §48-6427-3(e).

f. All of the fuel in issue was taxed under I.R.C. §4091 and, hence, not subject to the back-up tax under I.R.C. §4041(c).

g. No portion of the claim on the Form 720 for the quarter ended [REDACTED] consists of excise tax on unused fuel on hand or in storage facilities as of [REDACTED] that would necessitate a reduction required under Treasury Regulation §48-6427-3(a).

h. [REDACTED] will substantiate that its right to the claimed credit complies with the requirements of I.R.C. §34 or payment under I.R.C. §6427 for any period with records maintained in accordance with the provisions of Treasury Regulation §48-6427-5.

Issue 1 - Legal Discussion

The provisions of I.R.C. §6427 provide a taxpayer with three methods for recovery of excise tax imposed under I.R.C. §4091 on aviation fuel used in nontaxable uses: (a) filing of a claim for payment under I.R.C. §6427(l); (b) filing of a claim for credit on the taxpayer's income tax return under I.R.C. §34 and §6427(k)(3); and (c) filing of a claim for payment under I.R.C. §6427(l) as a credit against its excise tax liability. See also Treas. Reg. §48.6427-1(b); pages 6 and 7 of Instructions for Form 720 ([REDACTED]) and page 7 and 8 of Instructions for Form 720 ([REDACTED]).

Validity of [REDACTED]'s Claims under Provisions of I.R.C. §6427(l)

I.R.C. §6427(l)(1) generally provides that the Service shall pay (without interest) to the ultimate purchaser of fuel subject to tax under I.R.C. §4091 and used in nontaxable uses an amount equal to the aggregate amount of tax imposed on such fuel under I.R.C. §4091.

For purposes of I.R.C. §6427(l)(1)(B), a nontaxable use of fuel is any use that is exempt from tax imposed under I.R.C. §4041(a)(1) or §4041(c)(1) (other than by reason of the imposition of tax on any sale thereof). I.R.C. §6427(l)(2). Nontaxable uses under I.R.C. §6427(l) include the fuel used in civil aircraft that are engaged in foreign trade and fuel used other than as fuel in aircraft. See I.R.C. §4221(d)(3), §6427(l)(2), and §6427(l)(3)(B); Rev. Rul. 69-99, 1969-1 C.B. 235, 236; Rev. Rul. 73-212, 1973-1 C.B. 422, 423.

Limitation on Number of and Period
for Filing Claims under I.R.C. §6427(l)

Generally, the provisions of I.R.C. §6427(i)(1) limit the number of claims that a person may file under I.R.C. §6427(l) for any particular taxable year to one claim (one-claim rule). See also I.R.C. Treas. Reg. §48.6427-3(c). A person's taxable year is that person's taxable year for income tax purposes. I.R.C. §6427(i)(1).

The only exception to such one-claim rule is the quarterly claim rule provided in I.R.C. §6427(i)(4) for quarters ended by June 30, 1998 and §6427(i)(2) for quarters ended after June 30, 1998. See also Treas. Reg. §48.6427-3(c).

If a claim under I.R.C. §6427(l) for payment of excise tax imposed on fuel used in nontaxable uses during a taxable year is filed on an annual basis, the claim is allowed only if filed within the time prescribed by I.R.C. §6511 and related Treasury Regulations for filing a claim for credit or refund of income tax for the particular taxable year. See Treas. Reg. §48-6427-3. If the claim is filed on a quarterly basis, the claim must be filed during the first quarter following the last quarter included in the claim. I.R.C. §6427(i)(4)(B) (for allowable quarters through the quarter ended June 30, 1998) and §6427(i)(2)(B) (for claims beginning with the quarter ended September 30, 1998); Treas. Regs. §48-6427-3(b)(2); Section 6017(a) of Internal Revenue Service Restructuring and Reform Act of 1998, Pub. L. No. 105-206, 112 Stat. 685, 833 (1998).

Eligibility to File Quarterly Claims

Amendments to the provisions of I.R.C. §6427(i) during 1998 create different rules governing [REDACTED]'s ability to file quarterly claims with respect to the taxable periods in issue.

For a quarter within taxable years ended [REDACTED], [REDACTED], and [REDACTED], allowance and payment of a timely quarterly claim under I.R.C. §6427(l) is subject to the following three conditions:

a. The quarter is one of the first three calendar quarters of the taxpayer's taxable year. I.R.C. §6427(i)(4)(A).

b. A minimum of \$750.00 must be payable with respect to fuel used during the quarter. I.R.C. §6427(i)(4)(A); Treas. Reg. §48.6427-3(a).

c. No other claim for payment on Form 8849 or credit on Form 720 has been filed and paid or allowed for the quarter. I.R.C. §6427(i)(4)(A), §6427(k), and §6427(l)(1).

Although a minimum amount of \$750.00 must be payable for fuel used during a quarter, there are no provisions set forth in I.R.C. §6427, including the provisions of I.R.C. §6427(i)(4)(A) imposing such minimum amount, that require the filing of a claim for a quarter for which such amount is payable before the third quarter of a taxpayer's taxable year. In addition, the provisions of I.R.C. §6427(i)(1) (for annual claims) and §6427(i)(4)(A) (for allowable quarterly claims) limit the number of claims for a taxable period without regard to the type of nontaxable use.

Consequently, for quarters within taxable years ended [REDACTED], [REDACTED], and [REDACTED], a taxpayer could not file a quarterly claim for payment under I.R.C. §6427(l) for the fourth quarter of such taxable years. I.R.C. §6427(i)(4)(A); Treas. Reg. §48.6427-3(c). Before October 1, 1998, refunds for the fourth quarter of any taxable year had to be claimed as income tax credits under I.R.C. §34. See I.R.C. §6427(i)(4)(A). See H.R. Conf. Rep. 550, 105th Cong., 2d Sess. 533 (1998).

Changes Made during 1998 to Conditions for Eligibility
for Filing Quarterly Claims for Fourth Quarter of Taxable Year

Effective for claims filed after September 30, 1998, Congress amended I.R.C. §6427(i) to consolidate refund procedures for all fuels, including aviation fuel, and first allowed a taxpayer to file a quarterly claim under I.R.C. §6427(l) for the fourth quarter of a taxpayer's taxable year. See Section 9009 of the Transportation Equity Act for the 21st Century, Public Law 105-178, 105th Cong. 2d Sess., 112 Stat. 107, 507; H. R. Conf. Rep. 550, 105th Cong. 2d Sess. 534.

Manner of Filing Claim under I.R.C. §6427

The Service has issued Treasury Regulations prescribing the form and content to be used by corporate taxpayers in making claims for credit or payment under I.R.C. §6427(l). Under Treasury Regulation §48.6427-3(d)(1), a claim for credit against income tax must be on a Form 4136 that is prepared in accordance with instructions prescribed for the preparation of Form 4136 and attached to the taxpayer's Form 1120. Under Treasury Regulation §48.6427-3(d)(2), a claim for payment must be made on a Form 8849 or on such other form as the Service designates that reflects the taxable year or quarter for which the form is filed and is prepared in accordance with the instructions prescribed for

preparation of the form.

In addition, the instructions for Form 720 provide claims for payment under §6427(1) may be used as credits against excise tax liability reported on such Forms 720. Schedule C of a Form 720 is used for this purpose. See pages 6 and 7 of Instructions for Form 720 (revised October 1997) and page 7 and 8 of Instructions for Form 720 (revised January 1998).

Issue 1 - Application of Law to Facts

[REDACTED]'s claim totaling \$[REDACTED] under I.R.C. §6427(1) for payment on [REDACTED]'s Form 720 for the quarter ended [REDACTED] related to the period from the fourth quarter of [REDACTED] through the third quarter of [REDACTED], inclusive, was not properly allowed in the amount of \$[REDACTED] for at least three reasons.

First, the limitation period for filing any claim for eligible quarters ended by [REDACTED] expired on [REDACTED] (the end of the first quarter after the last quarter included in the claim) under the provisions of I.R.C. §6427(i)(4)(B) and [REDACTED]'s Form 720 for the quarter ended [REDACTED] was not filed until [REDACTED].

However, because the period for filing a quarterly claim for the quarter ended [REDACTED] expired on [REDACTED] and [REDACTED] filed its Form 720 for the quarter ended [REDACTED] on [REDACTED], the portion of the claim attributable to such quarter (\$[REDACTED]) was timely.

Second, [REDACTED]'s claim violates the quarterly claim rule of §6427(i)(4)(A) by including claims for quarters for which [REDACTED] previously filed quarterly claims under I.R.C. §6427(1) on at least the following two dates:

(a) On [REDACTED], [REDACTED] filed a Form 720 for the quarter ended [REDACTED] that included claims for fuel used during the third quarter of [REDACTED] (the months of [REDACTED], [REDACTED], and [REDACTED]) and the fourth quarter of [REDACTED] (the months of [REDACTED], [REDACTED], and [REDACTED]).

(b) On [REDACTED], [REDACTED] filed a Form 720 for the quarter ended [REDACTED] included claims for fuel used during the period "[REDACTED]".

As the result of [REDACTED]'s violation of the quarterly claim rule of I.R.C. §6427(i)(4)(A), \$[REDACTED] of the claim was improperly allowed:

<u>Period</u>	<u>Amount</u>
[REDACTED]	\$ [REDACTED]
Total	\$ [REDACTED]

Third, although the provisions of I.R.C. §6427(i)(4)(A) (which applies to quarters ended by [REDACTED] did not allow quarterly claims for the fourth quarter of a taxpayer's taxable year, the claim improperly includes claims attributable to [REDACTED] periods that constitute the fourth quarter of [REDACTED] of [REDACTED]'s taxable years. Such quarters are the quarters ended [REDACTED], [REDACTED], and [REDACTED].

Based on the above three defects in [REDACTED]'s claim on its Form 720 for the quarter ended [REDACTED] [REDACTED] was not entitled to allowance and payment (through the transfer of funds to satisfy [REDACTED]'s Form 720 liability for the quarter ended [REDACTED]) of \$[REDACTED] of the claim. Consequently, such payment constituted an erroneous refund.

Issue 2 - Methods to Recover Improperly
Allowed Refunds of Excise Taxes

The Service has three alternative methods of recovering improper refunds related to excise taxes imposed on fuels that are used in nontaxable uses: (a) assessment of excise tax liability of \$[REDACTED] (the improperly allowed portion of the claim reflected on [REDACTED]'s Form 720 for the quarter ended [REDACTED]) plus interest under I.R.C. §6201 by [REDACTED]; (b) assessment of excise tax equal to the portion of the improperly allowed claim attributable to quarters of use for which the applicable limitation period has not expired under I.R.C. §6206; or (c) an erroneous refund suit for I.R.C. §7405. See Janus Petroleum Co. v. United States, 915 F. Supp. 556, 559 (E.D.N.Y. 1996).

Issue 2.A. - Assessment Based on Underpayment
of Excise Tax under I.R.C. §6201

The provisions of I.R.C. §6201(a) allow and require the

Service to make inquiries, determinations, and assessments of all internal revenue taxes and interest. See also Treas. Reg. §301.6201-1(a). Such taxes include the taxes reported by a taxpayer on its return and determined by the Service. I.R.C. §6201(b)(1); Treas. Reg. §301.601-1(a)(1).

The authority of I.R.C. §6201 allows the Service to immediately (summarily) assess and collect taxes. Meyer v. Commissioner, 97 T.C. 555, 559 (1991). Because the provisions imposing excise taxes applicable to [REDACTED] are contained in the provisions of Subtitle D outside Chapters 41, 42, 43, and 44, the Service may make summary assessments with respect to such excise taxes without following any deficiency procedures attributable to other types of taxes. See I.R.C. §6211(a) and §6212(a).

For assessments of excise tax reported on Forms 720, the period for assessment of tax must be assessed within three years of filing the related Form 720. I.R.C. §6501(a) and §6501(b)(4).

Issue 2.A. - Application of Law to Facts

The Service may recover from [REDACTED] the portion of the credit that consisted of the improperly allowed amount (\$ [REDACTED]) claimed under I.R.C. §6427(i) and §6427(l) on [REDACTED]'s Form 720 for the quarter ended [REDACTED] through assessment and collection procedures under I.R.C. §6201. Because [REDACTED] filed its Form 720 on [REDACTED], the Service has until Friday, [REDACTED] to make an assessment with respect to [REDACTED]'s Form 720 liability for the quarter ended [REDACTED] for the improperly allowed amount. Allowing the credit resulted in [REDACTED]'s underpayment of excise tax liability reported on that return.

Issue 2.B. - Assessment Based on Excessive Amount under I.R.C. §6206 of Claim under I.R.C. §6427(l)

If any portion of a payment made under I.R.C. §6427 constitutes an excessive amount under I.R.C. §6675(b), such excessive amount may be assessed and collected as if it were the excise tax imposed under I.R.C. §4091 and as if the person who made the claim were liable for such tax. I.R.C. §6206; Treas. Reg. §48.6427-4(a); Rev. Rul. 79-298, 1979-2 C.B. 5.

The excessive amount under I.R.C. §6206 is the amount by which the amount claimed for any period under I.R.C. §6427 exceeds the amount allowable under I.R.C. §6427 for such period. I.R.C. §6675(b).

The period for assessing such excessive amount is three

years from the last day for filing of the claim prescribed by I.R.C. §6427. I.R.C. §6206. The last day for filing a claim under I.R.C. §6427(1) with respect to any fuel used during one of the first three quarters of a taxpayer's taxable year through the year ended [REDACTED] is the last day of the quarter following the last quarter included in the claim. I.R.C. §6427(i)(4)(A) and §6427(i)(4)(B). The language of I.R.C. §6206 indicates that assessment under I.R.C. §6206 does not depend on when a taxpayer actually files a specific quarterly claim with an improper claim for payment.

Because the Service's right to assess and collect the excessive amount under I.R.C. §6206 relates to the claim made for fuel used during a specific quarter and the specific limitation period for that quarter of use, assessment of the excessive amount related to a specific quarter of use and applicable interest under I.R.C. §6601 against a taxpayer is properly made with respect to the Form 720 liability for the quarter during which the fuel was used and not the quarter in which the taxpayer claimed the excessive amount. Consequently, the assessment of excessive amounts that relate to fuel used during prior quarters that were improperly claimed on a Form 720 is not made with respect to the Form 720 on which the claims actually appeared.

Issue 2.B. - Application of Law to Facts

Subject to applicable limitation periods for each separate quarter reflected in [REDACTED]'s Form 720 for the quarter ended [REDACTED], the Service can pursue recovery from [REDACTED] of the portion of the refund that consisted of the improperly allowed amount of the credit claimed under I.R.C. §6427 on [REDACTED]'s Form 720 for the quarter ended [REDACTED] through assessment and collection procedures under I.R.C. §6206. For the reasons discussed above, such amount was not allowable under the provisions of I.R.C. §6427 and, hence, constitutes an excessive amount under I.R.C. §6675(b).

However, the provisions of I.R.C. §6206, §6427(i)(4)(A), and §6427(i)(4)(B) restrict the Service's right to pursue recovery of the improper allowed aggregate amount of the claim (\$[REDACTED]) under I.R.C. §6206 to the aggregate amount of the claims for fuel actually used during the quarters reflected on [REDACTED]'s Form 720 for the quarter ended [REDACTED] for which applicable limitation periods have not expired under I.R.C.

\$6206. Such applicable limitation periods are as follows:

<u>Quarter for Which Claim Filed</u>	<u>Improperly Claimed Amount</u>	<u>Expiration of Assessment Period</u>
--	--------------------------------------	--

[REDACTED]

\$

[REDACTED]

*
*
*

**

[REDACTED]

Total

\$

[REDACTED]

- * Because quarter of actual use is unknown, amount may be included in amount for quarter ended [REDACTED].
- ** No known or obvious defects

(b)(5)(AC)

[REDACTED]

<u>Quarter for Which Claim Filed</u>
--

<u>Amount of Claim</u>

[REDACTED]

\$

[REDACTED]

Total

\$

[REDACTED]

(b)(5)(AC)

[REDACTED]

(b)(5)(AC)
[REDACTED]

In addition, the applicable limitation period under I.R.C. §6206 for assessment of excessive amounts for the quarters ended [REDACTED] and [REDACTED] expired on the respective dates of [REDACTED] and [REDACTED].

Issue 2.C. - Erroneous Refund Suits

The Service may recover erroneous refunds of any portion of an internal revenue tax. I.R.C. §7405(a); United States v. Wurts, 303 U.S. 414, 415 - 416 (1938); United States v. Regan, 651 F. Supp. 387, 388 (D. Mass. 1987). The Service's right to recover erroneous refunds includes improper claims under I.R.C. §6427(l) or fuel tax credits. See Valley Ice & Fuel Co. v. United States, 30 F.3d 635, 640 (5th Cir. 1994); United States v. King, 72 AFTR2d 94-809 (E.D. Va. 1993), aff'd 75 AFTR2d 95-717 (4th Cir. 1995) (credit for producing fuel from a nonconventional source under I.R.C. §29).

An action to recover an erroneous refund of excise tax related to a Form 720 or a tax credit claimed with respect to an income tax return on generally must be brought within two years after the making of the refund. I.R.C. §6532(b) and §7405(d); Janus Petroleum Co., 915 F. Supp. at 560 (gasoline tax under I.R.C. §6081); King, 72 AFTR2d 94-809, aff'd, 75 AFTR2d 95-717.

To prevail in an erroneous refund suit, the government must establish the following four elements:

- (a) That a refund was paid to the taxpayer.
- (b) The amount of the refund.
- (c) That the recovery action is timely.

(d) That the taxpayer was not entitled to the refund that the government seeks to recover.

See United States v. Commercial National Bank, 874 F.2d 1165, 1169 (7th Cir. 1994) (government failed to prove that taxpayer's claim was not timely); United States v. Daum, 968 F. Supp. 1037, 1041 - 1042 (W.D. Pa. 1997) (government satisfied its burden of

proving elements).

An erroneous refund occurs when a taxpayer receives a payment that he is not entitled to under the provisions of I.R.C. §6427(1). Valley Ice & Fuel Co., 30 F.3d at 640.

Issue 2.C. - Application of Law to Facts

The file reflects that the Service will be able to satisfy its burden of proving all four elements of an erroneous refund suit under I.R.C. §7405 and allow recovery from [REDACTED] of the portion of the claimed refund (\$[REDACTED]) that consisted of the amount of the credit under I.R.C. §6427(1) improperly claimed on [REDACTED]'s Form 720 for the quarter ended September 30, [REDACTED] and allowed by the Service. First, \$[REDACTED] of the refund was erroneous, because [REDACTED] was not entitled to receive such portion under the provisions of I.R.C. §6427(1). Valley Ice & Fuel Co., 30 F.3d at 640. Second, [REDACTED] received the refund through the transfer of the overpayment credit to [REDACTED]'s Form 720 liability for the quarter ended [REDACTED]. Third, the limitation period for bring an erroneous refund suit will not expire before [REDACTED] (two years after the transfer of the credit effective [REDACTED]).

Issue 3. - Discussion

(b)(5)(AC), (b)(7)a
[REDACTED]
[REDACTED]

Because excise taxes that are applicable to [REDACTED] are part of the provisions under Subtitle D that do not include Chapters 41, 42, 43, and 44, [REDACTED] will bear the burden of proof in any subsequent refund suit related to the Service's assessment under I.R.C. §6201 or §6206. See I.R.C. §7491(a)(2)(C); Welch v. Helvering, 290 U.S. 111, 115 (1933). However, in an action to recover an erroneous refund, the Service bears the burden of proof. Commercial National Bank, 874 F.2d at 1169; Solterman v. United States, 272 F.2d 387 (9th Cir. 1959); United States v. Wisconsin Power and Light Co., 71 AFTR2d 93-639 (W.D. Wis. 1992), aff'd in part and rev'd in part on other grounds, 38 F.3d 329 (7th Cir. 1994); King, 72 AFTR2d 94-809.

(b)(5)(AC), (b)(7)a
[REDACTED]
[REDACTED]

(b)(5)(AC), (b)(7)a

[REDACTED]

(b)(5)(AC), (b)(7)a

[REDACTED]

(b)(5)(AC), (b)(7)a

[REDACTED]

Issue 4 - Discussion

If the Service is allowed to recover any portion of the amount improperly allowed on [REDACTED]'s Form 720 for the quarter ended [REDACTED], interest will accrue on such portion from the date transferred from [REDACTED]'s Form 720 liability for the quarter ended [REDACTED] to [REDACTED]'s Form 720 liability for the quarter ended [REDACTED] until such portion is

Issue 5.B. - [REDACTED]'s Current Ability to Amend Income
Tax Returns to Make Original Claims
for Credits under I.R.C. §34

Tax credits are a matter of legislative grace. Hokanson v. Commissioner, 730 F.2d 1245, 1250 (9th Cir. 1984) (ITC); King, 72 AFTR2d 94-809, aff'd 75 AFTR2d 95-717 (credit under I.R.C. §29); Segel v. Commissioner, 89 T.C. 816, 842 (1987) (ITC). Consequently, in filing any amended income tax return (Form 1120X), [REDACTED] must satisfy the statutory requirements for claiming credits under I.R.C. §34 and §6427(k).

In lieu of payments under I.R.C. §6427(l), a taxpayer may claim a credit on its income tax return for a taxable year for aviation fuel used during that taxable year in an amount equal to the tax imposed under I.R.C. §4091. See I.R.C. §34(a) and §6427(k) (3).

To be eligible for credits against income tax under I.R.C. §34 related to aviation fuel used during any quarter of a taxable year, a taxpayer must satisfy the following requirements:

a. The amount is payable under the provisions of I.R.C. §6427. I.R.C. §34(a).

b. None of the amount claimed relates to fuel included in a previously filed quarterly claim related to fuel used during the first three quarters of a taxable year under I.R.C. §6427(i). I.R.C. §34(b).

Through the statutory requirement that the amount allowed to be claimed as a credit is limited to the amount payable under I.R.C. §6427, the provisions of I.R.C. §34 incorporate the rules under I.R.C. §6427 and applicable Treasury Regulations on the allowable amounts of credits claimed in lieu of payments under I.R.C. §6427. See also Treas. Reg. §48.6427-1(b).

Under the incorporated rules applicable to amounts payable under I.R.C. §6427, the amount of a claimed credit under I.R.C. §34 for any taxable year that does not relate to fuel used during a quarter for which a taxpayer has filed a quarterly claim is subject to the following conditions:

a. The claim is filed within the time prescribed by I.R.C. §6511 and related Treasury Regulations for filing a claim for credit or refund of income tax for the particular taxable year. See I.R.C. §6427(i)(1); Treas. Reg. §48-6427-3.

b. The amount claimed relates only to fuel used during such single taxable year. Treas. Reg. §48.6427-3(a).

c. The amount claimed does not violate the one-claim rule. I.R.C. §6427(i)(1); Treas. Reg. §48.6427-3(c).

Limitation Period for Filing Claim under I.R.C. §34

Under I.R.C. §6511(a), a taxpayer generally may file a refund claim of income tax within the later of (a) three years of the time that the return filed or (b) two years after payment of the related income tax. Such period may be extended by an agreement to extend the applicable assessment period under I.R.C. §6501. See I.R.C. §6501(c)(4) and §6511(c)(1); Treas. Reg. §301.6511(c)-1.

A claim for refund filed within the applicable limitation period is a statutory prerequisite to recovery of taxes alleged to have been erroneously or illegally collected. I.R.C. §6402(a) and §6511(b)(1); Treas. Regs. §301.6402-2(a)(1) and §301.6511(b)-1; United States v. Dalm, 494 U.S. 596, 602, 610 (1990) (limitation period for refund of gift tax under I.R.C. §6511 had expired); United States v. Garbutt Oil Co., 302 U.S. 528, 534 - 535 (1938); Mutual Assurance, Inc. v. United States, 56 F.3d 1353, 1356 (11th Cir. 1995); Edwards v. Malley, 109 F.2d 640, 645 (1st Cir. 1949); Paymaster Corp. v. All, 240 F. Supp. 505, 506 (N.D. Ill. 1965).

Issue 5.B.- Application of Law to Facts

If the Service makes an assessment under I.R.C. §6201 for the amounts improperly claimed under I.R.C. §6427 on [REDACTED]'s Form 720 for the quarter ended [REDACTED], [REDACTED] may be able to file amended Forms 1120 (Forms 1120X) with Forms 4136 to claim such amounts as credits under I.R.C. §34. A cursory review of [REDACTED]'s Forms 4136 already filed for the years ended [REDACTED], [REDACTED], and [REDACTED] reflect that [REDACTED] did not file claims under I.R.C. §6427(1).

Consequently, if an examination reveals that such Forms 4136 did not cover claims under I.R.C. §6427(1), [REDACTED] presently may file a claim for each of the taxable years ended [REDACTED], [REDACTED], and [REDACTED] until the expiration of the limitation periods for [REDACTED]'s right to file refund claims related to such Forms 1120. Currently, the earliest limitation period for filing such a claim will expire on [REDACTED] for the year ended [REDACTED]. However, if [REDACTED] and the Service execute the contemplated agreement to extend the applicable limitation period for the year ended [REDACTED],

[REDACTED] could have the right to file the amendment until a later extended date.

If [REDACTED] is allowed to amend its Forms 1120, amounts that may be properly claimed on such returns relate to fuel used only during the following quarters:

Taxable Year Ended

Quarter Ended

[REDACTED]

[REDACTED]

Issue 5.C. - [REDACTED]'s Inability to Amend Previously Filed
Claims for Credits under I.R.C. §34

(b)(5)(AC), (b)(7)a

[REDACTED]

(b)(5)(AC), (b)(7)a

[REDACTED]

Relevant General Rules for Amendment of Refund Claims

(b)(5)(AC), (b)(7)a

[REDACTED]

Generally, a taxpayer may file more than one administrative

refund claim within the statutory period applicable to filing of claims with the Service. Huettl v. United States, 675 F.2d 239, 241 (1982). However, a taxpayer generally may not file a valid amendment after a timely claim has been disallowed, adjusted or otherwise disposed of to amend such claim in any way. United States v. Memphis Cotton Oil Co., 288 U.S. 62, 72 (1933); New York Trust Co. v. United States, 87 F.2d 889, 890 - 891 (2d Cir.), cert. denied, 301 U.S. 704 (1937) (amendment filed after payment of claim); Solomon v. United States, 57 F.2d 150, 151 - 152 (2d Cir. 1952) (amendment filed after claim disallowed); Heberlein Patent Corp. v. United States, 23 AFTR 1132 (S.D.N.Y. 1938), aff'd on other grounds, 105 F.2d 965 (2d Cir. 1939) (claims filed after claims allowed in full); Mondsheim v. United States, 338 F. Supp. 786, 788 - 789 (E.D.N.Y. 1971), aff'd per curiam, 469 F.2d 1294 (2d Cir. 1973) (amendment filed in September 1966 after issuance of refund in September 1965 based on allowance of entire original claim); Clement v. United States, 405 F.2d 703, 706 (1st Cir. 1969) (amendment asserting new ground filed after complaint on original claim dismissed by district court and expiration of applicable limitation period for filing claim); Edwards v. Malley, 109 F.2d 640, 645 - 647 (1st Cir. 1940) (amendment filed after Service determined an overassessment of only a portion of claimed refund); Stratmore v. United States, 463 F.2d 1195, 1197 (3d Cir. 1972); Young v. United States, 203 F.2d 686, 689 (8th Cir. 1953); Allstate Insurance Co. v. United States, 550 F.2d 629, 633 (Ct. Cl. 1977) (second timely claim asserting ground in first claim and new grounds could not resurrect grounds set forth in disallowed first claim); Flank v. Sellers, 661 F. Supp. 952, 955 (S.D.N.Y. 1987); Reynolds v. United States, 70 AFTR2d 92-5072 (E.D. Wis. 1992) (Court determined that amendment made to pending claim). If a timely claim has been disposed of before expiration of applicable limitation period, the taxpayer must file a new claim to assert a new ground within the applicable limitation period. Edwards, 109 F.2d at 646; Allstate Ins. Co., 550 F.2d at 633.

However, when the federal courts determine that amendments involve only increases in the amount of a claimed refund that do not raise grounds not asserted in the original claim, the courts readily allow the amendment. Mutual Assurance, Inc., 56 F.3d at 1356 - 1357; St. Joseph Lead Co. v. United States, 299 F.2d 348, 349 - 351 & n. 4 (2d Cir. 1962); Pink v. United States, 105 F.2d 183, 185 - 186 (2d Cir. 1939) (judgment increased to damages of \$44,778.91 despite fact that complaint requested only \$23,030.96); United States v. Gates, 14 AFTR2d 6023 (Colo. 1964).

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Impact of Judicial Authority Related to Claims not Subject
to One-Claim Rule on Revenue Rulings 62-174 and 63-205

(b)(5)(AC), (b)(7)a

[REDACTED]

(b)(5)(AC), (b)(7)a

[REDACTED]

Issue 5.C. - Application of Law to Facts

If an investigation reveals that any portion of the amounts reflected on [REDACTED]'s filed Forms 4136 were for claims under I.R.C. §6427(1) for fuel used during such year, [REDACTED] should not be able to amend its Forms 1120 for the years ended [REDACTED], [REDACTED], and [REDACTED] to claim increased credits based on the Service's previous allowance of the claims on the filed Form 4136 and the application of the one-claim rule of I.R.C. §6427(i)(1).

Such amendments should be barred by the one-claim rule for three reasons. First, for all three years, the claims were allowed through [REDACTED]'s payment of a net amount of income tax that reflected a reduction attributable to the credit claimed under I.R.C. §34. See Rev. Rul. 62-172, 1962-2 C.B. 341; Rev. Rul. 63-205, 1963-2 C.B. 622. Second, [REDACTED] will retain the benefit of such claimed credits until and unless the claims are disallowed by the Service. Third, for the years ended [REDACTED] and [REDACTED], the Service transferred to other tax

liabilities overpayment credits that reflected the allowance of the credits under I.R.C. §34 for the years ended [REDACTED] and [REDACTED].

(b)(5)(AC), (b)(7)a

[REDACTED]

Issue 6 - Improperly Allowed Claims for Quarters
Before the Quarter Ended [REDACTED]

The file does not reflect sufficient facts to determine the validity of all of the following claims allowed with respect to [REDACTED]'s Forms 720 for the following quarters:

<u>Quarter Ended</u>	<u>Amount of Claim</u>
[REDACTED]	\$ [REDACTED]

However, the file reflects that [REDACTED]'s claims on its Form 720 for the quarters ended [REDACTED] and [REDACTED] may violate the one-claim rule because such Forms 720 reflect claims for amounts related to quarters for which [REDACTED] already filed refunds. These previous claims covered (a) the quarter ended [REDACTED] on [REDACTED]'s Form 720 for the quarter ended [REDACTED]; (b) the quarters ended [REDACTED] [REDACTED], [REDACTED], and [REDACTED] on [REDACTED]'s Forms 720 for the quarter ended [REDACTED]; and (c) the quarter ended [REDACTED] on [REDACTED]'s Form 720 for the quarter ended [REDACTED].

In addition, the invalidity of [REDACTED]'s claim on its Form 720 for the quarter ended [REDACTED] and [REDACTED]'s history of filing late claims reflect that such claims may be defective

under the provisions of I.R.C. §6427. Therefore, we recommend that the Service examine the validity of such claims.

Because the limitation period for assessment of improper claims under §6201 and I.R.C. §6206 related to [REDACTED]'s Form 720 for the quarter ended [REDACTED] expired on the respective dates of [REDACTED] (three years after [REDACTED] filed its Form 720 on [REDACTED]) and [REDACTED] (three years after time for filing a claim on [REDACTED]), the Service cannot assess under I.R.C. §6201 or §6206 any amount attributable to an improper claim under I.R.C. §6427 for the quarter ended [REDACTED]. In addition, because the limitation period for commencing an erroneous refund suit under I.R.C. §7405 for the amount of any improperly allowed portion of the claim for the quarter ended [REDACTED] expired on [REDACTED] (two years after allowance on [REDACTED]), the Service cannot recover such amount through an erroneous refund action.

However, because the earliest limitation period for assessment of improper claims under I.R.C. §6201 and §6206 will not expire until the respective dates of [REDACTED] and [REDACTED] for the quarters ended [REDACTED], [REDACTED], and [REDACTED], sufficient time should exist to determine the validity of the above claims related to such quarters and disallow any claims that may have been allowed improperly. The earliest applicable limitation periods for assessment under I.R.C. §6201 related to the quarters ended [REDACTED] and [REDACTED] will not expire until [REDACTED]. The earliest applicable limitation periods for assessment under I.R.C. §6206 related to the quarters ended [REDACTED] and [REDACTED] will not expire until [REDACTED].

Issue 7 - Discussion

To the extent that it is determined that any of the claims under I.R.C. §6427(1) allowed with respect to [REDACTED]'s Forms 720 for the quarters ended [REDACTED], [REDACTED] and [REDACTED] were not properly allowable, the above discussion on the applicable law with respect to Issue 2.A. in this memorandum and the applicable limitation period with respect to Issue 6 reflects that the Service can collect the improperly allowed amounts through assessment and collection under I.R.C. §6201 or §6206.

However, because the two-year limitation period for commencing an erroneous refund suit under I.R.C. §7405 related to the credits allowed with respect to [REDACTED]'s Form 720 for the quarters ended [REDACTED] and [REDACTED] expired

CC: [REDACTED]
[REDACTED]

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on the respective dates of [REDACTED] and [REDACTED] (two years after the respective dates of allowance of credits against tax), the Service may not commence any erroneous refund action related to [REDACTED]'s Forms 720 for the quarters ended [REDACTED] and [REDACTED]. However, [REDACTED] may bring an erroneous refund suit under I.R.C. §7405 with respect to the credit allowed with respect to [REDACTED]'s Form 720 for the quarter ended [REDACTED] until [REDACTED] (two years after allowance of the claim on [REDACTED]) and the quarter ended [REDACTED] until [REDACTED] (two years after allowance of the claim on [REDACTED]).

(b)(5)(AC), (b)(7)a
[REDACTED]

Because no further action is required by this office, we are closing our file.

If you have any questions, please contact me at [REDACTED]
[REDACTED]

cc: TL Cats

cc: [REDACTED]

cc: [REDACTED]